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**FOURTH AMENDED AND RESTATED  
BYLAWS  
OF  
U.S. FUTURES EXCHANGE, L.L.C.**

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## FOURTH AMENDED AND RESTATED BYLAWS

### OF

## U.S. FUTURES EXCHANGE, L.L.C.

### ARTICLE I

#### DEFINITIONS

*Section 1.1* **Definitions.** In these Exchange Bylaws, the following terms shall, unless the context otherwise indicates, have the meaning set forth below:

**“Act”** means the Commodity Exchange Act, as in effect from time to time.

**“Affiliate”** means, with respect to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person.

**“Affiliated Person”** means:

(a) With respect to any Entity, any Person who Controls, is Controlled by or is under common Control with such Entity, and, without limiting the generality of the foregoing, any partner, trustee, officer, director or employee (whether or not having Control) of such Entity; and

(b) With respect to any individual, any Person of which such individual is a partner, member, trustee, officer, director or employee or has Control, and any Person who Controls, is Controlled by, or is under common Control with such Person.

**“Board”** means the Board of Directors of the Exchange, which shall constitute the “manager” of the Exchange within the meaning of the Delaware Act.

**“Boston HoldCo”** means Exchange Place Holdings, L.P. (formerly known as BTEX Holdings, L.P.), a Delaware limited partnership.

**“Bylaws”** means, with respect to any Entity, the bylaws or similar code of such Entity, and the interpretations, resolutions, policies, procedures, orders and directives of the Entity thereof or thereunder, as in effect from time to time; and if no other Entity is specified, shall mean these Exchange Bylaws.

**“Clearing Member”** means a Person who has the privilege to clear Contracts with the Clearing Organization pursuant to these Exchange Bylaws, the Rules of the Exchange and the Bylaws and Rules of the Clearing Organization.

**“Clearing Organization”** means any Person designated by the Exchange to clear transactions effected on or subject to the Rules of the Exchange.

**“Commission Regulation”** means any rule, regulation, or order of the Commission, as in effect from time to time (including any successor provision), and any interpretation thereof by the Commission or its staff.

**“Commodity”** means any “commodity” within the meaning of the Act.

**“Contract”** means a Futures Contract or an Option.

**“Director”** means a person elected to the Board by the Class A Shareholders in accordance with Section 4.2.

**“Disciplinary Committee”** means a disciplinary committee of the Board and any subcommittee or panel thereof.

**“Effective Date”** shall have the meaning set forth in Section 10.4.

**“Entity”** means any Person other than an individual.

**“Eurex AG”** means Eurex Frankfurt AG, a joint stock company organized under the law of the Federal Republic of Germany.

**“Eurex HoldCo”** means U.S. Exchange Holdings, Inc., a Delaware corporation.

**“Eurex Directors”** means the Director(s) nominated by Eurex HoldCo in accordance with Section 4.2(a)(i), if any.

**“Exchange”** means U.S. Futures Exchange, L.L.C., a Delaware limited liability company. Unless otherwise provided in these Exchange Bylaws or the Rules, any reference to an action required or permitted to be taken by the “Exchange” pursuant to these Exchange Bylaws or the Rules shall include an action to be taken by any duly authorized officer, agent or employee of the Exchange.

**“Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

**“Exchange Bylaws”** means these Fourth Amended and Restated Bylaws of the Exchange, as amended from time to time.

**“Exchange Trading System”** means the Exchange’s electronic system for trading Contracts.

**“Fiscal Year”** shall have the meaning set forth in Section 10.1.

**“Futures Contract”** means a contract for the purchase or sale of a Commodity for future delivery traded on or subject to the Rules of the Exchange.

**“Governmental Agency”** means the Commission, the U.S. Securities and Exchange Commission and any other agency, federal or state, domestic or foreign, regulating

trading in commodities, securities, futures contracts, options, currencies or other financial instruments.

**"Independent Directors"** means the Directors nominated and elected in accordance with Section 4.2(a)(ii).

**"LLC Agreement"** means the Fourth Amended and Restated Limited Liability Company Agreement of the Exchange, as amended from time to time in accordance therewith.

**"Man"** means Man Group USA Inc., a New York corporation, and/or its Permitted Transferees (as defined in the LLC Agreement).

**"Member"** means any Person admitted to membership in the Exchange as provided in the Rules of the Exchange. A Member shall not be a "member" of the Exchange within the meaning of the Delaware Act, unless such Member is also a Shareholder.

**"Officials"** shall have the meaning set forth in Section 9.4(a).

**"Option"** means an option to purchase or sell a Futures Contract, which option is traded on or subject to the Rules of the Exchange.

**"Rules"** means, with respect to any Entity, the rules of such Entity and the interpretations, resolutions, orders, directives and procedures of the Entity thereunder, as in effect from time to time, and, if no other Entity is specified, means the Rules of the Exchange.

**"Shareholder"** means a holder of record of Shares of any class. A Shareholder who is admitted as such in accordance with the LLC Agreement and these Exchange Bylaws shall be a "member" of the Exchange within the meaning of the Delaware Act, but shall not be a Member of the Exchange within the meaning of these Exchange Bylaws and Rules of the Exchange, unless it has been admitted as such.

**"Share Purchase Agreement"** means the Share Purchase Agreement dated as of July 27, 2006 by and among the Exchange, Eurex HoldCo and Man.

**"Shares"** means the Class A Shares, the Class B Shares and any other shares in the Exchange issued by the Board pursuant to Section 3.2 hereof.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word "will" shall be construed to have the same meaning and effect as the word "shall." All capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the LLC Agreement.

## ARTICLE II

### ORGANIZATION

*Section 2.1* **Name.** The name of the Exchange shall be "U.S. Futures Exchange, L.L.C." or such other name as the Board may determine. The Exchange may cause appropriate trade name and similar statements to be filed and published under the name as set forth in this Section, or such other names as the Exchange may have or use in any jurisdiction from time to time.

*Section 2.2* **Principal Place of Business and Registered Office and Agent.**

(a) The principal place of business of the Exchange shall be such place as the Board may designate from time to time.

(b) The address of the registered office of the Exchange in the State of Delaware shall be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19808 in the County of New Castle. The name and address of the Registered Agent for service of process on the Exchange in the State of Delaware shall be c/o The Corporation Trust Company, or such other registered office or agent or address as the Board may designate from time to time.

*Section 2.3* **Qualification in Other Jurisdictions.** The Board shall cause the Exchange to be qualified to do business or registered under assumed or fictitious names, statutes or similar laws in any jurisdiction in which such qualification or registration is required or desirable, and shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary to effect such qualification or registration.

*Section 2.4* **Term.** The term of the Exchange shall continue in full force and effect until the Exchange is dissolved.

*Section 2.5* **Purposes.** The Exchange's business and general purpose is to engage in any lawful act or activity for which a limited liability company may be organized under the Delaware Act.

*Section 2.6* **No State Law Partnership.** The Shareholders intend that the Exchange shall not be a partnership (including, without limitation, a general partnership or a limited partnership) or joint venture, and that no Shareholder or Director shall be a partner or joint venturer of any other Shareholder or Director with respect to the business of the Exchange, for any purposes other than U.S. federal, state and local tax purposes, and neither these Exchange Bylaws nor the LLC Agreement shall be construed to suggest otherwise. The Shareholders intend that the Exchange shall be a partnership for U.S. federal, state and local tax purposes and agree not to take any position or make any election, in a tax return or otherwise, inconsistent with the treatment of the Exchange as a partnership or a disregarded entity for such purposes.

*Section 2.7*     **Conduct of Business.**     The Exchange shall not conduct any portion of its business through any subsidiary unless the rights of Eurex HoldCo set forth in Sections 4.2(a)(i), 4.2(a)(ii), 4.2(c), 4.3(b)(i), 4.3(b)(ii), 4.3(b)(iv), 4.4(a)(i), 4.4(a)(ii), 4.4(a)(iv) and the last sentence of Section 6.1 apply with respect to such subsidiary, *mutatis mutandis*, substantially as set forth herein.

## ARTICLE III

### **SHAREHOLDERS**

*Section 3.1*     **Names and Addresses.**     The name and address and number of Shares of each class of Shares held by each Shareholder shall be set forth in the books and records of the Exchange.

*Section 3.2*     **Number and Classes of Shares.**

(a)     The Exchange shall initially issue two classes of Shares: Class A Shares and Class B Shares, each with such rights, powers, preferences, obligations, qualifications, limitations and restrictions as set forth in the LLC Agreement and these Exchange Bylaws. Shares are owned by the Shareholders and are, as of immediately following the Effective Date, as set forth on Schedule I attached to the LLC Agreement. Schedule I may be amended from time to time after the Effective Date in accordance with the LLC Agreement. Shares are owned by the Shareholders as set forth on Schedule I attached to the LLC Agreement, as amended from time to time in accordance therewith. The Board may issue additional Shares from time to time, which additional Shares may be issued in one or more outstanding classes or series of Shares or in one or more new classes or series, the rights, powers, preferences, obligations, qualifications, limitations and restrictions of which shall be established by the Board. Such additional Shares may (i) rank senior to, junior to, or *pari passu* with, outstanding Shares as to the payment or the distribution of assets on liquidation, (ii) bear a stated distribution and/or rank senior to, junior to, or *pari passu* with, outstanding Shares as to distributions of Net Cash Flow, (iii) be redeemable by the holder thereof, (iv) have voting or other rights with respect to the management of the Exchange which rank senior to, junior to, or *pari passu* with, outstanding Shares, and/or (v) otherwise have rights, powers or preferences which are senior (or otherwise superior) to, junior to, or *pari passu* with, any outstanding Shares. In addition, the Board may from time to time issue options and/or warrants to purchase Shares, with such terms as the Board may determine.

(b)     As more fully set forth in Sections 4.2 and 4.3, the holders of the outstanding Class A Shares shall be entitled to elect the Directors, including the Independent Directors, and to remove any Director at any time, with or without cause. Except as specifically set forth herein or as required by the Delaware Act, the holders of the outstanding Class A Shares shall not be entitled to vote upon any matter.

(c)     The holders of the outstanding Class B Shares shall not be entitled to elect any Directors. Except as specifically set forth herein or as required by the Delaware Act, the holders of the outstanding Class B Shares shall not be entitled to vote upon any matter.



(d) Shares of any class may be issued and held in fractional amounts.

(e) Except as may otherwise be provided in the LLC Agreement or these Exchange Bylaws, or as required by the Delaware Act, the voting power of the Class A Shareholders shall be pro rata in accordance with their holdings of Class A Shares.

*Section 3.3*     **Admission of Shareholders.** The Board shall have the right to admit Persons as additional Shareholders as provided in the LLC Agreement.

*Section 3.4*     **Limitation of Liability.** Except as may otherwise be provided in the LLC Agreement or these Exchange Bylaws, the debts, obligations and liabilities of the Exchange, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Exchange, and no Shareholder, Member, Director or Officer shall be obligated individually or personally for any such debt, obligation or liability of the Exchange solely by reason of being a Shareholder, Member, Director or Officer of the Exchange.

*Section 3.5*     **Time and Place of Meetings.** All meetings of Shareholders of the Exchange shall be held at such time and place, either within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

*Section 3.6*     **Annual Meeting.** There shall be an annual meeting of Shareholders of the Exchange, to be held at such date, time and place, either within or without the State of Delaware, as shall be determined by the Board and stated in the notice of meeting.

*Section 3.7*     **Notices.** Whenever under the provisions of this Article III the Shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given, which shall state the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of any meeting shall be given not less than 10 days nor more than 30 days before the date of the meeting to each Shareholder entitled to vote at such meeting. Notice may be given by personal delivery, by mail, by facsimile or by electronic mail to such address or facsimile number as may appear on the records of the Exchange. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the Shareholder at such Shareholder's address as it appears on the records of the Exchange. If given by delivery, facsimile or electronic mail, notice is given when received by the applicable Shareholder. An affidavit of the General Counsel or an Assistant General Counsel of the Exchange that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

*Section 3.8*     **Quorum.**

(a) Except as otherwise provided by law, Class A Shareholders holding the majority of Class A Shares shall constitute a quorum at any meeting at which Directors are to be elected.

(b) If a quorum shall not be present in person or represented by proxy at any meeting of the Shareholders at which Directors are to be elected, the Class A Shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn

the meeting from time to time without notice other than announcement at the meeting, until such holder of the Shares entitled to vote shall be present or represented by proxy. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote thereat. At the adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally called.

*Section 3.9* **Voting.** At every meeting of the Shareholders at which Directors are elected, each Class A Shareholder having the right to vote shall be entitled to vote in person or by proxy. Except as may otherwise be provided in the LLC Agreement or these Exchange Bylaws, all actions requiring a Shareholder vote shall be by majority vote of the Shareholders or such class of Shareholders, as applicable, entitled to vote thereon.

*Section 3.10* **Votes per Share.** Except as otherwise provided by these Exchange Bylaws, the LLC Agreement or law, and subject to Section 3.2(e), hereof, the Shareholders of record shall be entitled to a number of votes equal to the number of Shares standing in his, her or its name on the books of the Exchange as of the relevant record date. The Shareholders shall not be entitled to cumulative voting.

*Section 3.11* **Shareholder List.** A complete list of the Shareholders entitled to vote at any meeting of Shareholders arranged in alphabetical order with the address of each and the number of Shares held by each, shall be prepared by the Exchange's General Counsel. Such list shall be open to the examination of any Shareholder for any purpose germane to the meeting during ordinary business hours for a period of at least 10 days prior to such meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Shareholder who is present thereat.

*Section 3.12* **Proxies.** Every Class A Shareholder entitled to vote at a meeting of Shareholders at which Directors are elected or to express consent or dissent without a meeting may authorize any person or persons to act for such Class A Shareholder by proxy. Every proxy must be signed by the Class A Shareholder or the Class A Shareholder's attorney-in-fact. No proxy shall be valid after the expiration of three years from the date thereof unless the proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the Class A Shareholder executing the proxy, except as otherwise provided by law and except that a proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power.

*Section 3.13* **Written Consent in Lieu of a Meeting.** Any action required to be taken at any annual or special meeting of the Shareholders, or any action which may be taken at any annual or special meeting of such Shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of Shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those

Shareholders who had the right to vote with respect to the applicable action but have not consented in writing thereto.

*Section 3.14* **Record Date.** In order that the Exchange may determine the Shareholders entitled to notice of or to vote at any meeting of Shareholders or any adjournment thereof, or entitled to express consent to the election of Directors in writing without a meeting, or entitled to receive payment of any distribution, or for the purpose of any other lawful action, the Exchange may fix, in advance, a record date, which shall not be more than 30 days before the date of such meeting, nor more than 30 days prior to any other action.

*Section 3.15* **Shareholders of Record.** The Exchange shall be entitled to treat the holder of record of any Share or Shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly required by the laws of the State of Delaware.

*Section 3.16* **Other Activities of the Shareholders; Fiduciary Duties.** It is understood and accepted that the Shareholders and their Affiliates have or may hereafter have interests in other business ventures that are or may be competitive with the activities of the Exchange and that, except as otherwise provided in the LLC Agreement or Share Purchase Agreement, to the fullest extent permitted by law, nothing in these Exchange Bylaws shall limit the current or future business activities of any of the Shareholders or any of their respective Affiliates, whether or not such activities are competitive with those of the Exchange or otherwise. Except as expressly provided herein or in the LLC Agreement or Share Purchase Agreement, nothing in these Exchange Bylaws shall limit in any manner the ability of any Shareholder to exercise its rights under these Exchange Bylaws or the LLC Agreement or as a Shareholder of the Exchange and neither these Exchange Bylaws or the LLC Agreement nor anything provided at law or equity shall create, or be deemed or interpreted to create, any fiduciary or similar duty of any Shareholder owing to any other Shareholder or the Exchange; provided, however, that nothing in these Exchange Bylaws, express or implied, shall relieve any officer or director of the Exchange, as such, of any fiduciary duties they may have to the Exchange or its Shareholders.

## ARTICLE IV

### **DIRECTORS**

*Section 4.1* **Duties, Powers and Eligibility.**

(a) Except as otherwise specifically provided in these Exchange Bylaws or the LLC Agreement or by applicable law, all powers of the Exchange shall be held at any time, and all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Exchange shall be made, by the Board, without the vote or approval of any Shareholders or Members. The Board shall have all the powers and duties of managers of a limited liability company as set forth in the Delaware Act, including without limitation the right to authorize any Director, officer or other Person to act on behalf of the

Exchange. Any action taken by the Board or any Director, officer or other Person duly authorized in accordance with these Exchange Bylaws shall constitute the act of, and shall serve to bind, the Exchange. Subject to the provisions of these Exchange Bylaws, the Board may create, and delegate any part or all of its powers and authority to, such committees as the Board may deem appropriate. Notwithstanding the foregoing, the Directors, managers and officers of the Exchange shall have authority and power set forth in Rule 804 (Emergency Powers) of the Rules.

(b) Except as otherwise provided in these Exchange Bylaws or the LLC Agreement or authorized by the Board, no Director, manager or officer of the Exchange, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Exchange for any purpose, engage in any transaction, make any commitment, enter into any contract or incur any obligation (whether as principal, surety or agent) in the name of the Exchange or in any other way bind the Exchange or hold itself out as acting for or on behalf of the Exchange. Any attempted action in contravention of this Section shall be null, void *ab initio* and not binding upon the Exchange, unless ratified or authorized in writing by the Board.

(c) Without limiting the generality of the foregoing paragraph (a), the Board shall have the power to undertake the following actions, which actions shall not be undertaken unless approved by the Board; provided, however, that the Board shall have the right to delegate any of the following action to a committee of the Board if the Board determines that such delegation is required by, or otherwise advisable pursuant to, applicable law:

(i) Designate or terminate any Person as a Clearing Organization to clear transactions effected on or subject to the Rules of the Exchange;

(ii) Raise additional equity or debt capital from existing Shareholders or other Persons as it deems appropriate to properly carry out the Exchange's business and operations;

(iii) Issue additional Shares (in one or more outstanding classes of Shares);

(iv) Issue warrants and options exercisable into Shares from time to time; and

(v) Enter into any transaction required to be approved by the Board pursuant to Section 3.10 of the LLC Agreement.

(d) Each Director shall be at least 18 years of age and shall be eligible to serve pursuant to Section 4.6(a) hereof.

(e) Each Director shall have and exercise, in her or his duties to the Exchange and its Shareholders, the fiduciary duties owed by directors of a business corporation organized under the General Corporation Law of the State of Delaware; provided that the Class A Directors shall not in any way be prohibited or restricted from engaging or investing in, independently or

with others, any business opportunity of any type or description, including, without limitation, those business opportunities that might be the same or similar to the business of the Exchange.

*Section 4.2*     **Number; Election; Tenure.**

(a) Commencing on the Effective Date, the total number of Directors shall be nine (9). Subject to Section 4.2(c), the number of Directors may be increased or decreased (but not below nine (9) Directors) from time to time upon the vote of the Class A Shareholders. Each Director shall be elected by the vote of the Class A Shareholders and, in connection therewith, each Class A Shareholder hereby agrees to vote its respective Class A Shares in accordance with and so that the Board is comprised as set forth in the following provisions:

(i) For so long as Eurex HoldCo together with its Affiliates holds Shares representing a Company Percentage Interest on a fully-diluted basis of at least (x) fifteen percent (15%), then, subject to the provisions of these Exchange Bylaws, Eurex HoldCo shall be entitled to nominate two (2) Directors, or (y) five percent (5%) but less than fifteen percent (15%), then, subject to the provisions of these Exchange Bylaws, Eurex HoldCo shall be entitled to elect one (1) Director.

(ii) Independent Directors. At least one fourth ( $\frac{1}{4}$ ) of the Directors shall at all times be Independent Directors. A Director shall be an "Independent Director" if such Director has no material relationship with the Exchange that reasonably could affect the independent judgment or decision making of such Director. In addition, a Director shall not be considered an "Independent Director" if any of the following circumstances exist: (1) the Director is an officer or employee of the Exchange or a director, officer or employee of its Affiliate, (2) the director is a member of the Exchange, or a person employed by or Affiliated (which, for this purpose, shall include acting as a director or officer of a member) with a member (which, for this purpose, is defined according to Section 1a(24) of the Act and Commission Regulation 1.3(q)), (3) the Director receives more than \$100,000 in payments from the Exchange, any Affiliate of the Exchange, or from a member or anyone affiliated with a member, provided that compensation for services as a Director will not be counted towards the \$100,000 threshold test, and (4) any of the relationships set forth in clauses (1)-(4) above apply to a member of the Director's "immediate family" (i.e., spouse, parents, children and siblings). All of the disqualifying circumstances described in clauses (1)-(4) above shall be subject to a one-year look back. For purposes of the disqualifying circumstances described in clauses (1)-(3) above, an Affiliate of the Exchange shall be deemed to include parents and subsidiaries of the Exchange or entities that share a common parent with the Exchange. For so long as Eurex HoldCo together with its Affiliates holds Shares representing a Company Percentage Interest of:

(A) at least fifteen percent (15%), then

1. Eurex HoldCo shall be entitled to nominate one (1) Independent Director (or, in the event the number of Independent Directors is increased above three (3), one-third ( $\frac{1}{3}$ ) of the total number of Independent Directors);

2. Man shall be entitled to nominate one (1) Independent Director (or, in the event the number of Independent Directors is increased above three (3), one-third (1/3) of the total number of Independent Directors); and

3. Eurex HoldCo shall nominate the remaining Independent Director nominee(s) from a list of three (3) Independent Director candidates (or, in the event the number of Independent Directors is increased above three (3), then a list of candidates equal to three times the number of Independent Directors to be nominated pursuant to this subclause (3), which list shall be prepared by Man in good faith and within a reasonable time period and so that each such candidate qualifies to serve as an Independent Director. Eurex HoldCo shall have the right, exercisable within fifteen (15) days of receipt of the list of such Independent Director candidates, to nominate the number of Independent Directors it is entitled to nominate pursuant to this Section 4.2(a)(ii)(A)(3) providing the other Class A Shareholders with written notice of such nominations. If Eurex HoldCo nominates such Independent Director nominee(s) within the time period provided in the immediately preceding sentence, the Class A Shareholders shall vote their respective Class A Shares for such nominee(s). If Eurex HoldCo fails to notify the Class A Shareholders of its Independent Director nominee(s) within the time period specified herein, then the Independent Directors shall be elected by the Class A Shareholders in accordance with Section 4.2(a)(iii); or

(B) at least five percent (5%) but less than fifteen percent (15%), then

1. Man shall be entitled to nominate one (1) Independent Director (or, in the event the number of Independent Directors is increased above three (3), one-third (1/3) of the total number of Independent Directors); and

2. Eurex HoldCo shall nominate the remaining Independent Director nominee(s) from a list of six (6) Independent Director candidates (or, in the event the number of Independent Directors is increased above three (3), then a list of candidates equal to three times the number of Independent Directors to be nominated pursuant to this subclause (2) prepared by Man in good faith and so that each such candidate qualifies to serve as an Independent Director. Eurex HoldCo shall have the right, exercisable within fifteen (15) days of receipt of the list of such Independent Director candidates, to nominate the number of Independent Directors it is entitled to nominate pursuant to this Section 4.2(a)(ii)(B)(2) by providing the other Class A Shareholders with written notice of such nominations. If Eurex HoldCo nominates such Independent Director nominee(s) within the time period provided in the immediately preceding sentence, the Class A Shareholders shall vote their respective Class A Shares for such nominee(s). If Eurex HoldCo fails to notify the Class A Shareholders of its

Independent Director nominee(s) within the time period specified herein, then the Independent Directors shall be elected by the Class A Shareholders in accordance with Section 4.2(a)(iii); or

(C) less than five percent (5%), then the Class A Shareholders shall nominate all of the Independent Director nominees in accordance with Section 4.2(a)(iii) below.

Notwithstanding the foregoing Independent Director nomination procedures, for a Director nominated pursuant to clauses (A)-(C) above to qualify as an Independent Director, the Board shall, on the record, have found that such nominee satisfies the definition of "Independent Director" set forth above.

(iii) Other Director Nominees. The remaining Directors, other than those nominated pursuant to Sections 4.2(a)(i) and 4.2(a)(ii) above, shall be nominated by the vote of the Class A Shareholders.

(b) Except for the initial Directors elected as of the Effective Date pursuant to a written consent of the Class A Shareholders, the Directors shall be elected each year at the annual meeting of Shareholders in accordance with Section 4.2(a).

(c) For so long as Eurex HoldCo together with its Affiliates hold Shares representing a Company Percentage Interest on a fully-diluted basis of at least five percent (5%), without the prior written consent of Eurex HoldCo, (i) the Class A Shareholders may not increase the number of Directors other than to add additional Independent Directors pursuant to a determination by the Board that such additional Independent Directors are required by, or otherwise advisable pursuant to, applicable law, and (ii) if the number of Independent Directors is increased pursuant to clause (i) above, the number of Independent Directors shall only be increased in the increments of three (3) Independent Directors, which additional Independent Directors shall be nominated in accordance with the provisions of Section 4.2(a)(ii).

(d) Each Director shall hold office until the annual meeting of Shareholders next succeeding his or her election and until his or her successor is elected and has qualified, or until his or her earlier resignation or removal.

#### *Section 4.3*     **Resignation and Removal.**

(a) A Director may resign at any time by giving written notice to the Board or to the President of the Exchange. Such resignation shall take effect upon receipt thereof by the Board or by the President, unless otherwise specified therein. The acceptance of a resignation shall not be necessary to make it effective.

(b) Any one or more of the Directors may be removed, either with or without cause, at any time by the vote of the Class A Shareholders at any meeting called for such purpose; provided, however, that, except as otherwise provided in Section 4.3(c), (i) any Eurex Director may be removed, either with or without cause, at any time only by Eurex HoldCo, acting in its sole and absolute discretion, (ii) for so long as Eurex HoldCo has the right to

nominate an Independent Director pursuant to Section 4.2(a)(ii)(A)(1), such Independent Director may be removed, either with or without cause, at any time only by Eurex HoldCo, acting in its sole and absolute discretion, (iii) any Independent Director nominated by Man pursuant to Section 4.2(a)(ii)(A)(2) or Section 4.2(a)(ii)(B)(1) may be removed, either with or without cause, at any time only by Man, acting in its sole and absolute discretion, and (iv) for so long as Eurex HoldCo has the right to nominate an Independent Director(s) pursuant to Section 4.2(a)(ii)(A)(3) or Section 4.2(a)(ii)(B)(2), such Independent Director(s) may be removed, either with or without cause, at any time only upon the written agreement of Eurex HoldCo and Man.

(c) A Director who becomes ineligible to serve on the Board pursuant to Section 4.6 shall be automatically removed upon the occurrence of such ineligibility without any act of the Shareholders or the Board.

*Section 4.4*     **Vacancies.**

(a) Any vacancy occurring among the Directors for any reason shall be filled by the vote of the Class A Shareholders; provided, however, that (i) any vacancy occurring among the Eurex Directors for any reason shall be filled by Eurex HoldCo in accordance with Section 4.2, (ii) any vacancy occurring for any reason with respect to an Independent Director nominated by Eurex HoldCo pursuant to Section 4.2(a)(ii)(A)(1), if any, shall be filled by Eurex HoldCo in accordance with Section 4.2(a)(ii), (iii) any vacancy occurring for any reason among any Independent Director nominated by Man pursuant to Section 4.2(a)(ii)(A)(2) or Section 4.2(a)(ii)(B)(1) shall be filled by Man in accordance with Section 4.2(a)(ii), and (iv) any vacancy occurring with respect to any Independent Directors nominated by Eurex HoldCo pursuant to Section 4.2(a)(ii)(A)(3) or Section 4.2(a)(ii)(B)(2) shall be filled in accordance with the procedure set forth in Section 4.2(a)(ii)(A)(3) or Section 4.2(a)(ii)(B)(2), as applicable.

(b) Any individual appointed by the Board to fill a vacancy as a Director shall hold office for the balance of the term of the Director whose position such successor is filling.

*Section 4.5*     **Compensation.** Each Director shall receive for services rendered as a Director of the Exchange such compensation as may be fixed by the Board. Nothing herein contained shall be construed to preclude any Director from serving the Exchange in any other capacity and receiving compensation therefor.

*Section 4.6*     **Eligibility for Service on Boards and Committees.**

(a) No individual shall be eligible to serve on the Board, any arbitration panel, oversight panel, or any Disciplinary Committee of the Exchange, if such individual:

(i) was found within the prior three years by a final decision of the Commission, any other Governmental Agency, a court of competent jurisdiction or any self-regulatory organization, to have committed a disciplinary offense;

(ii) entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) constitute the basis for a disciplinary offense;



(iii) currently is suspended from trading on any contract market, is suspended or expelled from membership in any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a final decision of the Commission, any other Governmental Agency, a court of competent jurisdiction or any self-regulatory organization that such person committed a disciplinary offense; or

(B) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) constitute the basis for a disciplinary offense;

(iv) currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) currently is subject to, or has had imposed on such person, within the prior three years, a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the Act;

(vi) currently is subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any "self-regulatory organization" as that term is defined in Section 3(a)(26) of the Exchange Act; or

(vii) if an Independent Director no longer satisfies the requirements set forth in Section 4.2(a)(ii).

(b) Any individual who is a member of the Board, an arbitration panel or a Disciplinary Committee shall immediately notify the President of any final decision which subjects such person to disqualification pursuant to paragraph (a) of this Section.

(c) Terms used in this Section and not defined in these Exchange Bylaws shall have the meanings set forth in Section 1.63(a) of the Commission Regulations.

*Section 4.7*     **Improper Use or Disclosure of Material, Non-Public Information.**

(a) No member of the Board or any committee established by the Exchange shall use or disclose, for any purpose other than the performance of such person's official duties as a member of the Board or such committee, any material non-public information obtained by such person as a result of such person's participation on the Board or on any such committee; provided, however, that if any such person who effects any transactions after having received any such material, non-public information so obtained can show that such transaction was effected in the ordinary course of such person's business, such person shall not be deemed to

have used such information in violation of this Section, unless it can be shown that such person would not have effected such transaction in the absence of such information.

(b) For the purposes of this Section, the terms “material” and “non-public information” shall each have the meaning set forth in Section 1.59(a) of the Commission Regulations.

## ARTICLE V

### **MEETINGS OF THE BOARD**

*Section 5.1* **Time and Place.** Meetings of the Board shall be held at such times and places, within or without the State of Delaware, and within or without the United States of America, as shall be determined by the Board or otherwise in accordance with these Exchange Bylaws.

*Section 5.2* **Annual Meeting.** An annual meeting of the Board shall be held promptly after each annual meeting of Shareholders on such day and at such time as the Board may fix, for the purpose of organization, the election of officers and any other proper purpose.

*Section 5.3* **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall, from time to time, be determined by the Board.

*Section 5.4* **Special Meetings.** Special meetings of the Board may be called at any time by the Chairman of the Board, the President, the General Counsel, or any three members of the Board. At any special meeting of the Board, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any matter is consented to by all of the members of the Board.

*Section 5.5* **Quorum and Voting.**

(a) A majority of the entire Board shall constitute a quorum at any meeting of the Board.

(b) The act of a majority vote of the Directors present at any duly constituted meeting, if a quorum is present, shall be the act of the Board, except as may otherwise be specifically provided by law or these Exchange Bylaws; provided, however, that to the extent a vote of the Board results in a tied or “deadlocked” vote with respect to a particular matter, the Chairman of the Board shall have two votes with respect to such matter and therefore shall cast the deciding vote to break such tie or deadlock. If at any meeting of the Board there shall be less than a quorum present, the Director or Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall have been obtained.

*Section 5.6*    **Notices.**

(a)    All meetings of the Board or any committee shall be held on notice to the members thereof. Special meetings of the Board or any committee shall be held upon not less than one day's notice stating the purpose, place, date and hour of the meeting and specifying the person or persons at whose direction the meeting is called, except that notice by mail shall be given not less than five Business Days prior to the date of the meeting.

(b)    At any special meeting of the Board or any committee, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any other matter is consented to by all of the members of the Board or such committee.

(c)    A notice pursuant to this Section may be given orally or in writing, by personal delivery, by mail, by telephone, by facsimile or by electronic mail to such address, telephone or facsimile number as may be listed on the records of the Exchange.

*Section 5.7*    **Written Consents in Lieu of a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Directors having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Directors entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent of the Directors shall be given to those Directors who have not consented in writing thereto.

*Section 5.8*    **Telephonic Participation in Meetings.** The Board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

*Section 5.9*    **Rules of Order.** Unless otherwise provided by the Board, all meetings of the Board shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

*Section 5.10*    **Proxies.** Notwithstanding Section 5.9 or any other provision herein, every Director entitled to vote at a meeting of the Board or any committee of the Board may authorize any individual to act for such Director by proxy. A proxy must be signed by the Director. A proxy may provide that the individual authorized to act for such Director may act at a specific meeting or at any meeting at which such Director is entitled to vote. No proxy shall be valid after the expiration of three years from the date thereof unless the proxy provides for a longer period. A proxy shall (a) be revocable at the pleasure of the Director executing the proxy, except as otherwise provided by law, and (b) shall automatically expire when the individual granting such proxy ceases to be a Director.

## ARTICLE VI

### COMMITTEES

*Section 6.1*     **Designation and Powers.** The Board may in its discretion appoint one or more committees of the Board consisting of one or more of the Directors of the Exchange, and may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in a resolution of the Board or in these Exchange Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange; but no such committee shall have power or authority in reference to: (i) approving or adopting, or recommending to the Shareholders, any action or matter expressly required by the Delaware Act to be submitted to Shareholders for approval or (ii) amending these Exchange Bylaws. In the absence or disqualification of any such member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member. For so long as Eurex HoldCo together with its Affiliates holds Shares representing a Company Percentage Interest on a fully-diluted basis of at least fifteen percent (15%), Eurex HoldCo shall have the right to designate one of the Eurex Directors to attend in a nonvoting-observer capacity any meeting of a committee of the Board.

*Section 6.2*     **Meetings of Committees.**

(a) Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee or upon the call of the President, the chairman of the committee or any three members of the committee. Notice of any meeting of a committee shall be given as provided in Section 5.6.

(b) A majority of the entire committee shall constitute a quorum at any meeting of a committee. The act of a majority of the members of a committee shall be the act of the committee, except as may be specifically provided by law, these Exchange Bylaws or the Rules.

(c) Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of the committee consent to such action in writing.

(d) Any member of a committee may participate in a meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

(e) Unless otherwise provided by the committee, all meetings of the committee shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

## ARTICLE VII

### NOTICES; REPORTS

*Section 7.1* **Delivery of Notices.** Notices to Shareholders, Directors and committee members shall be given as provided in Section 3.7 or 5.6, as applicable. Notice by mail shall be deemed to be given at the time when deposited in the United States mail, postage prepaid, and addressed to Shareholders, Directors or committee members at their respective addresses appearing on the books of the Exchange, unless any such Shareholder, Director or committee member shall have filed with the General Counsel of the Exchange a written request that notices intended for him or her be mailed or delivered to some other address, in which case the notice shall be mailed to or delivered at the address designated in such request. Notice given orally or by personal delivery, telephone, facsimile or electronic mail shall be deemed to be given when received by the intended recipient.

*Section 7.2* **Waiver of Notice.** Whenever notice is required to be given by these Exchange Bylaws or applicable law, a waiver thereof in writing, signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance of a Person at a meeting of Shareholders, Directors or any committee, as the case may be, shall constitute a waiver of notice of such meeting, except where the Person is attending for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of Shareholders, Directors or any committee need be specified in any waiver of notice.

*Section 7.3* **Reports Requested by Shareholders to Comply with Law.** The Exchange shall make all reasonable efforts to provide any Shareholder promptly with any reports reasonably requested by such Shareholder in writing that are necessary to enable such Shareholder or its equityholders to comply with applicable law or the request of a Governmental Agency.

## ARTICLE VIII

### OFFICERS

*Section 8.1* **Officers.** The Board shall appoint a Chairman of the Board, a Chief Executive Officer, a Chief Financial Officer and a General Counsel, and may appoint such other officers as the Board may from time to time determine; provided, however, that the Chairman of the Board as of the Effective Date shall be Kevin Davis. No officer, other than the Chairman of the Board, need be a member of the Board. Any number of offices may be held by the same individual. Each officer (other than the Chairman of the Board) shall be a full-time employee of the Exchange and/or any Affiliate thereof.

*Section 8.2*     **Other Officers and Agents.** The Board may also appoint such agents as the Board may at any time or from time to time determine, such agents to serve for such terms and to exercise such powers and perform such duties as shall be specified at any time or from time to time by the Board.

*Section 8.3*     **Tenure; Resignation; Removal; Vacancies.** Each officer of the Exchange shall hold office until his or her successor is elected and qualified, or until his or her earlier resignation or removal; provided that if the term of office of any officer shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term regardless of whether any other person shall have been elected or appointed to succeed him or her. Any officer may be removed at any time, with or without cause, by the Board; provided that any such removal shall be without prejudice to the rights, if any, of the officer so employed under any employment contract or other agreement with the Exchange. An officer may resign at any time upon written notice to the Board. If the office of any officer becomes vacant by reason of death, illness, resignation, retirement, disqualification, removal from office or otherwise, the Board may appoint a successor or successors to hold office for such term as may be specified by the Board.

*Section 8.4*     **Compensation.** Except as otherwise provided by these Exchange Bylaws, the compensation of all officers of the Exchange appointed by the Board shall be fixed by the Board.

*Section 8.5*     **Authority and Duties.** There is delegated to the officers of the Exchange such rights and powers to manage and control the business and affairs of the Exchange as are prescribed in the LLC Agreement and these Exchange Bylaws or the Rules or by the Board. In addition to the rights and powers hereinafter specifically prescribed for the respective officers, the Board may from time to time delegate to any of the officers such additional rights and powers as the Board may see fit, and the Board may from time to time delegate any or all of the rights and powers hereinafter specifically prescribed for any officer upon any other officer or officers.

*Section 8.6*     **Chairman of the Board.** The Chairman of the Board, who shall be a Director, shall preside and prepare the agenda at meetings of the Board; provided that the agenda for any special meeting of the Board called in accordance with Section 5.4 will include the matters stated in the notice of such meeting. The Chairman of the Board shall be a member *ex officio* of all committees of the Board and shall perform such other duties as may be assigned from time to time by the Board.

*Section 8.7*     **Chief Executive Officer.** The Chief Executive Officer shall have general charge of the business, affairs and property of the Exchange, and shall have control over the officers, agents and employees of the Exchange, subject to the direction of the Board. Without limiting the generality of the foregoing, the Chief Executive Officer shall have the authority to: (a) hire and dismiss employees of the Exchange and to establish their qualifications, duties and compensation; (b) execute and deliver contracts, instruments and other documents on behalf of the Exchange; and (c) perform such other duties as may be specifically assigned to him or her from time to time by the Board. The Chief Executive Officer shall see that all resolutions

and orders of the Board are carried into effect, and in connection with the foregoing, shall be authorized to delegate to the other officers such of his or her powers and such of his or her duties as he or she may deem to be advisable.

*Section 8.8*     **Chief Financial Officer.** The Chief Financial Officer shall have the custody of the Exchange's funds and securities, shall keep full and accurate accounts of receipts and disbursements in the books and records of the Exchange and shall deposit all monies and other valuable effects in the name and to the credit of the Exchange in such depositories as may be selected by the Chief Financial Officer or the Board. The Chief Financial Officer shall also perform such other duties as may be specifically assigned to him or her from time to time by the Board or by the President.

*Section 8.9*     **Restrictions on Trading and Disclosure by Employees.**

(a) No employee of or consultant to the Exchange shall:

(i) trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information; or

(ii) disclose for any purpose inconsistent with the performance of such person's official duties as an employee of or consultant to the Exchange any material non-public information obtained through special access related to the performance of such duties; provided, however, that this Section shall not prohibit disclosures made by such an employee or consultant in the course of such employee's or consultant's duties, or disclosures made to any other self-regulatory organization, a court of competent jurisdiction or any representative of any agency or department of the federal or state government acting in his or her official capacity.

(b) If the President (or, in the case of the President, the Chairman of the Board), in his or her sole discretion, finds that any employee or consultant has committed a violation of this Section, such employee or consultant shall be subject to such sanctions, including but not limited to demotion, suspension or discharge, as the President (or, in the case of the President, the Board), in his, her or its sole discretion, deems appropriate.

(c) Terms used in this Section and not defined in these Exchange Bylaws shall have the meanings set forth in Section 1.59(a) of the Commission Regulations.

## **ARTICLE IX**

### **EXCULPATION AND INDEMNIFICATION**

*Section 9.1*     **Exculpation; Litigation.**

(a) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO

HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS SECTION, NEITHER THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE), ITS SHAREHOLDERS, ITS MEMBERS OR ITS CLEARING MEMBERS, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO ANY PERSON, INCLUDING, BUT NOT LIMITED TO, A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION, INCLUDING BUT NOT LIMITED TO ANY INABILITY TO ENTER OR CANCEL ORDERS, OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM, OR (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING SHALL NOT LIMIT THE LIABILITY OF ANY SHAREHOLDER, MEMBER, CLEARING MEMBER, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, INCIDENT, OR OCCURRENCE WITHIN THEIR CONTROL.

(b) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE) TO ANY PERSON, RELATING TO THE EXCHANGE TRADING SYSTEM, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.

(c) ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST THE EXCHANGE, ANY AFFILIATES OF THE EXCHANGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. ANY PARTY BRINGING ANY SUCH ACTION, SUIT OR PROCEEDING CONSENTS TO JURISDICTION IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF NEW YORK COUNTY, NEW YORK, AND WAIVES ANY OBJECTION TO VENUE THEREIN. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY THESE EXCHANGE BYLAWS OR THE RULES OF THE EXCHANGE.

(d) ANY SHAREHOLDER, MEMBER OR AFFILIATE OF A MEMBER OR EMPLOYEE OF ANY OF THEM, WHICH OR WHO COMMENCES ANY ACTION OR PROCEEDING, WHETHER IN COURT, ARBITRATION OR ANY OTHER FORUM, AGAINST THE EXCHANGE, ANY MEMBERS OF THE BOARD OR ANY COMMITTEE, OR ANY OFFICERS, EMPLOYEES OR AGENTS OF THE EXCHANGE, ARISING OUT OF



OR IN ANY WAY CONNECTED TO ANY TRANSACTIONS EFFECTED ON THE EXCHANGE OR THE CONDUCT OF THE EXCHANGE'S AFFAIRS, WHICH OR WHO FAILS TO PREVAIL IN SUCH ACTION OR PROCEEDING SHALL REIMBURSE ON DEMAND THE EXCHANGE AND ANY SUCH MEMBER OF THE BOARD OR COMMITTEE, OFFICER, AGENT OR EMPLOYEE FOR ANY AND ALL REASONABLE EXPENSES AND DISBURSEMENTS (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COSTS) INCURRED BY IT OR ANY OF THEM IN THE DEFENSE OF SUCH ACTION OR PROCEEDING.

(e) IN ANY ACTION, SUIT OR PROCEEDING UNDER OR IN CONNECTION WITH THESE EXCHANGE BYLAWS, EACH PARTY WAIVES ANY RIGHT IT MIGHT HAVE TO A TRIAL BY JURY.

*Section 9.2*     **Indemnification.**

(a)     **Actions, Suits or Proceedings Other Than by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board indemnify any current or former employee or agent of the Exchange, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Exchange) by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permissible under the Delaware Act, as then in effect, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; except that any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

(b)     **Actions or Suits by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board, indemnify any current or former employee or agent of the Exchange who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit, by or in the right of the Exchange to procure a judgment in its favor by reason of

the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permitted under the Delaware Act, as then in effect, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange; except that (i) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper; and (ii) any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise.

(c) **Indemnification for Expenses of Successful Party.** To the extent that a Director, officer, employee or agent of the Exchange has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (a) or (b) of this Section, or in defense of any claim, issue or matter therein, such person shall be indemnified by the Exchange against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) **Determination of Right to Indemnification.** Any indemnification under paragraph (a) or (b) of this Section (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section. Such determination shall be made by the Board by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or if there are no such Directors, by independent legal counsel in a written opinion, or by the Shareholders.

(e) **Advancement of Expenses.** Expenses (including attorneys' fees) incurred by an officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Exchange as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

(f) **Other Rights.** The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section shall not be deemed

exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under these Exchange Bylaws, any agreement, vote of Shareholders or disinterested Directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. Nothing contained in these Exchange Bylaws shall prevent the Board from approving the indemnification of or advancement of expenses for any Person against and for any liability, cost or expense (including attorneys' fees) incurred by such Person in connection with defending any claim or any civil, criminal, administrative or investigative action, suit or proceeding arising out of any alleged act or omission by or on behalf of the Exchange, to the extent the Board considers it in the best interests of the Exchange to do so.

(g) **Insurance.** By action of the Board, notwithstanding an interest of the Directors in the action, the Exchange may purchase and maintain insurance, in such amounts as the Board deems appropriate, on behalf of any person who is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Exchange shall have the power to indemnify such person against such liability under the provisions of this Section.

#### *Section 9.3* **Enforcement.**

(a) The right to be indemnified or to the advancement or reimbursement of expenses pursuant to this Article:

(i) is a contract right pursuant to which the individual entitled thereto may bring suit as if the provisions hereof or of any such resolution were set forth in a separate written contract between the Exchange and such individual, and

(ii) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution or agreement with respect to events occurring prior thereto.

(b) If a request to be indemnified or for the advancement or reimbursement of expenses pursuant to this Article is not paid in full by the Exchange within 30 days after a written claim has been received by an officer of the Exchange therefor and the claimant thereafter brings suit against the Exchange to recover the unpaid amount of the claim which is successful in whole or in part, the Exchange shall be obligated to pay the claimant the expenses, including attorneys' fees and expenses, of prosecuting such claim.

#### *Section 9.4* **Indemnification by Members and Shareholders.**

(a) If any action or proceeding is brought or threatened against the Exchange or any individual entitled to be indemnified by the Exchange pursuant to this Article (such individuals being collectively referred to as "Officials"), claiming, directly or indirectly, in whole or in part, that the Exchange or such Official has failed, neglected or omitted to prevent,

detect or require any conduct by a Member, a Shareholder or an Affiliated Person of a Member or Shareholder, which conduct is alleged to constitute a violation of any federal or state law, any Commission Regulation, any rule of any self-regulatory organization, these Exchange Bylaws, or any Rule, such Member or Shareholder shall indemnify and hold harmless the Exchange and each such Official from and against all loss, liability, damage and expense (including but not limited to attorneys' fees, legal expenses, judgments and amounts paid in settlement) incurred by the Exchange or such Official in or in connection with any such action or proceeding.

(b) If any action or proceeding is brought against the Exchange or an Official which could result in indemnification by a Member or Shareholder pursuant to paragraph (a) of this Section:

(i) The Exchange or such Official, as the case may be, shall promptly give such Member or Shareholder notice thereof in writing.

(ii) Neither the Exchange nor any such Official may settle a claim to the extent it seeks the recovery of money damages without the prior consent of such Member or Shareholder; provided that if such Member or Shareholder does not consent to any proposed settlement within 10 days following the date it receives written notice of the terms of such settlement, the Exchange or such Official may require such Member or Shareholder to post such security for the payment of its indemnification obligations to the Exchange or such Official as the Exchange or such Official deems necessary, but not in excess of the money damages claimed plus interest and anticipated expenses.

*Section 9.5* **Exculpation and Reimbursement of Exchange.** Any Member or Shareholder which institutes an action or proceeding against the Exchange, or any of the officers, Directors, committee members, agents or employees of the Exchange, and which fails to prevail in such action or proceeding, shall reimburse the Exchange and such officer, Director, committee member, agent or employee, for any and all costs or expenses (including but not limited to attorneys' fees, legal expenses and amounts paid by way of indemnifying any officers, Directors, employees or other persons by the Exchange) incurred in connection with the defense of such action or proceeding.

## ARTICLE X

### **MISCELLANEOUS PROVISIONS**

*Section 10.1* **Fiscal Year.** The Fiscal Year of the Exchange for accounting and tax purposes shall be from January 1 through December 31 of each calendar year except as otherwise fixed by the Board or required by the Code.

*Section 10.2* **Amendments of These Exchange Bylaws.** These Exchange Bylaws may be amended, in whole or in part, only by vote of the Class A Shareholders; provided, however, that the Class A Shareholders shall not have the right to amend (i) Sections 2.7, 4.2(a)(i), 4.2(a)(ii) (other than to amend the definition of "Independent Director" pursuant to a determination by the Board that such amended definition is required by, or otherwise advisable

pursuant to, applicable law), 4.2(c), 4.3(b)(i), 4.3(b)(ii), 4.3(b)(iv), 4.4(a)(i), 4.4(a)(ii), 4.4(a)(iv), the last sentence of Section 6.1 or clauses (i) and (ii) of this Section 10.2 without the prior written consent of Eurex HoldCo, (ii) any Section of these Exchange Bylaws that would have a material and disproportionate (taking into account the relative rights and obligations of the applicable Shareholder compared to the other Shareholders) effect on the rights or obligations of a particular Shareholder hereunder without the prior written consent of such Shareholder or (iii) this clause (iii) or any Section of these Exchange Bylaws that would have a material and disproportionate (taking into account the relative rights and obligations applicable to the Class A Shares and Class B Shares) effect on the rights or obligations applicable to the Class B Shares without the prior written consent of the Class B Shareholders holding a majority of the outstanding Class B Shares.

*Section 10.3* **Captions.** Section titles or captions contained in these Exchange Bylaws are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of these Exchange Bylaws or the intent of any provision hereof.

*Section 10.4* **Effective Date.** These Exchange Bylaws shall be effective upon the consummation of the Closing (as such term is defined in the Share Purchase Agreement) (such date, the "Effective Date"). If the Share Purchase Agreement is terminated in accordance with its terms prior to the consummation of the Closing, then these Exchange Bylaws shall be null and void and shall be of no further force and effect.

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